

RES12-083

Wilmington, Delaware  
December 6, 2012

#3763

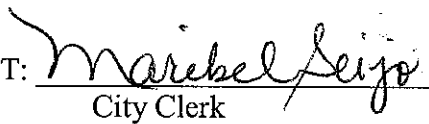
Sponsor:

Council  
Member  
D. Brown

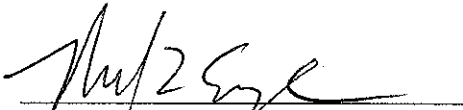
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Lease Agreement between Cityfest, Inc. and the City of Wilmington for the property located at 301 East 15<sup>th</sup> Street, a copy of which is attached hereto and made a part hereof, is hereby approved, and the Mayor is hereby authorized and directed to execute as many copies of said Lease Agreement as may be necessary.

Passed by City Council,  
December 6, 2012

ATTEST:

  
City Clerk

Approved as to form this 5<sup>th</sup>  
day of December, 2012

  
Senior Assistant City Solicitor

**SYNOPSIS:** This Resolution approves a Lease Agreement between the City and Cityfest, Inc. for the property located at 301 East 15<sup>th</sup> Street. This Lease has a term of 10 years and an annual rent of \$1.00.

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT (the "Lease")** is made this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between the **City of Wilmington**, a municipal corporation of the State of Delaware (hereinafter referred to as "City") and **Cityfest, Inc.**, a non-profit corporation incorporated under the laws of the State of Delaware (hereinafter referred to as "Cityfest").

### **WITNESSETH:**

**WHEREAS**, City owns that certain parcel of land located at 301 E. 15<sup>th</sup> Street, Wilmington, Delaware, being Tax Parcel No. 26-029.30-126 (hereinafter referred to as the "Demised Premises"); and

**WHEREAS**, Cityfest desires to lease the Demised Premises from the City so that the Demised Premises may be used as a multidisciplinary arts incubator, known as the Urban Artist Exchange, which will allow for the creation, cultivation, exhibition and performance of new works of art; and

**WHEREAS**, City desires to enter into such an agreement with Cityfest.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the parties hereto agree as follows:

(1) **Demised Premises.** The Demised Premises, being Tax Parcel No. 26-029.30-126, is bounded by E. 16<sup>th</sup> Street to the north, Clifford Brown Walk to the east, E. 15<sup>th</sup> Street to the south, and N. Walnut Street to the west. The Demised Premises formerly housed the mounted patrol unit of the Wilmington Police Department.

(2) **Lease Term.** The City hereby leases to Cityfest the Demised Premises for a term of ten (10) years beginning on January 1, 2013 and ending on December 31, 2023, if not sooner terminated in accordance with the terms of this Lease.

(3) **Rental.** Cityfest shall pay to City as rental for the Demised Premises the sum of \$1.00 per year during the term of this Lease. Cityfest covenants and agrees to pay this rental in advance at the commencement of the Lease and by January 15<sup>th</sup> of each year of the lease term.

(4) **Use of the Premises.** Cityfest shall use the Demised Premises primarily for the operation of a multidisciplinary arts incubator known as the Urban Artist Exchange. The use of the Demised Premises shall be consistent with its zoning classification as well as the provisions of the certificate of incorporation and strategic plan for Cityfest. Cityfest shall use the Demised Premises in such a way as to maximize the services and uses provided to the public consistent with the uses specified in this Lease. Cityfest intends to renovate the Demised Premises in three phases. Phase I shall consist of landscape design that will incorporate an outdoor performance space, building interior concept development, property

clean-up and main building general repairs. Phase II shall consist of the renovation of the 10,000 square foot building on the Demised Premises to include an intimate 100-seat black box theater, inter-disciplinary visual arts gallery, rehearsal studio/artwork development space, and a light-fare café. Phase III shall consist of the renovation of the stables on the Demised Premises for use as artists' studios and gallery/retail space. If Cityfest does not complete Phase II within a reasonable time after the execution of this Lease, but in no event more than three years from the date hereof, City shall have the right to terminate the Lease upon sixty (60) days notice to Cityfest and Cityfest shall promptly surrender the Demised Premises to City.

(5) Condition of the Premises. Cityfest shall make an inspection of the Demised Premises prior to the commencement of the Lease term to familiarize itself with the Demised Premises as it is being leased in "as is" condition. City shall bear no responsibility for the condition of the Demised Premises and Cityfest's ability to use the same for its purposes.

(6) Maintenance/Improvements.

a. Cityfest, at its sole cost and expense, shall be responsible for all maintenance, repairs and replacements of the Demised Premises, including capital items, necessary to keep the Demised Premises and all improvements in good order and condition. Any alterations or improvements to be made to the Demised Premises, including the development the three phases of the Urban Artist Exchange, shall be made at Cityfest's sole cost and expense after review and approval by the City. All work done at the Demised Premises shall be performed in a good and workmanlike manner with high quality materials.

b. Cityfest shall take all actions reasonably recommended by the City to avoid harming or removing any trees on the Demised Premises. Cityfest shall not remove any tree without obtaining the prior written consent of the City's Urban Forest Administrator. To the extent that Cityfest must remove any trees, Cityfest, at its sole cost and expense, shall provide at least two (2) replacement trees in accordance with Wilm. C. (Code) § 46-32.

(7) Taxes; Utilities.

a. During the term of this Lease, Cityfest shall pay all real estate taxes that may be assessed, levied or imposed upon the Demised Premises or any part thereof, or the use or occupancy thereof. City shall, upon receipt of a bill for any real estate tax, or notice of assessment, or notice of increase, or other change therein, forward the same to Cityfest.

b. During the term of this Lease, Cityfest shall be solely liable for the payment of any and all water and sewer service charges; stormwater fees; gas, electricity, heating fuel, telephone and trash service charges; and other charges for utilities incurred by it and charged against the Demised Premises during the term of this Lease.

(8) Insurance.

a. During the term of this Lease, Cityfest shall procure and maintain in effect, at its sole cost and expense, commercial general liability insurance against any claims for bodily injury, death or property damage, occurring on, in or about the Demised Premises, and against contractual liability for any such claims, such insurance to afford minimum protection for a combined single limit of \$1,000,000.

b. Cityfest shall also maintain, at its sole cost and expense, workers compensation insurance meeting statutory requirements, and, during all periods of construction at the Demised Premises, appropriate builder's risk insurance. Cityfest, at its sole cost and expense, may also maintain from time to time such other insurance coverages as may be deemed prudent by Cityfest, including but not limited to, fire and casualty insurance on the buildings and other improvements on the Demised Premises.

c. All policies of insurance required by this Lease shall be maintained with insurance underwriters authorized to do business in the State of Delaware. During the term of this Lease, Cityfest shall not permit or cause the cancellation or reduction of coverage of any insurance required hereunder without City's approval. Cityfest shall further name the City as an additional insured under its policies of insurance for the Demised Premises.

(9) Indemnification. Cityfest covenants and agrees to indemnify and hold harmless the City, its officers, agents and employees, against any suit or claim of any kind for damages or injury to persons or property sustained from the use of the Demised Premises, including environmental claims attributable to Cityfest's use of the Demised Premises, excluding any claim arising out of or resulting from the City's own negligent, reckless and/or intentionally unlawful conduct.

(10) Fire or Other Casualty.

a. In the event that the Demised Premises are rendered wholly unfit, by fire or other casualty, for the uses and purposes of Cityfest hereunder, then this Lease shall terminate on the date of such fire or casualty.

b. In the event that the Demised Premises are rendered partially unfit, by fire or other casualty, then Cityfest shall have one hundred twenty (120) days following such fire or casualty to determine whether, in the judgment of Cityfest, the Demised Premises can be repaired with reasonable promptness so as to be fit for Cityfest's use and purposes. If Cityfest notifies the City within the one hundred twenty day period of its election to pursue the repair of the Demised Premises, then this Lease shall continue as set forth herein, and Cityfest, at its sole cost and expense, shall make the necessary repairs to the Demised Premises in a timely, good and workmanlike manner without unreasonable delay. If Cityfest fails to notify the City of its decision within the one hundred twenty day period or declines to pursue the repair of the Demised Premises, then this Lease shall automatically

terminate upon the conclusion of the one hundred twenty day period and Cityfest shall surrender possession of the Demised Premises to the City.

(11) Assignment/Sublease. Cityfest shall not assign this Lease or sublet the Demised Premises or otherwise transfer the rights and obligations under this Lease without the prior written consent of the City. Any assignment, sublease, or other transfer in violation of this provision shall result in termination of this Lease.

(12) Compliance with Laws. Cityfest shall operate and maintain the Demised Premises in accordance with all applicable federal, state, and local laws, rules and regulations that may apply to the Demised Premises.

(13) Termination.

a. In the event that Cityfest breaches any term or condition of this Lease and, after written notice of such default by the City, fails to cure such default within thirty (30) days after receipt of such notice, or such default is of such a character as to require more than thirty (30) days to cure and Cityfest fails to commence to cure such default through the exercise of reasonable diligence within that thirty (30) day period, the City may terminate this Lease immediately by giving Cityfest written notice of the termination and the reasons therefor.

b. City shall have the right to terminate this Lease upon nine (9) months notice to Cityfest when the City requires the Demised Premises for another public purpose. The parties may also terminate this Lease upon mutual consent.

c. Upon the termination or expiration of this Lease, Cityfest shall promptly remove all of its effects from the Demised Premises, except fixtures which have become part of the realty, and peacefully yield up the Demised Premises to the City.

d. Upon termination of this Lease, all structures or improvements on the Demised Premises shall become the property of the City.

e. Cityfest shall be liable to the City for any damage to the Demised Premises, normal wear and tear excepted.

(14) Notice. Any notice required hereunder to be given to Cityfest shall be sufficient if in writing and sent by certified mail to Cityfest at the Demised Premises. Any notices required hereunder to be given to the City shall be sufficient if in writing and sent by certified mail to City of Wilmington Law Department, Louis L. Redding City/County Building, 9<sup>th</sup> Floor, 800 N. French Street, Wilmington, Delaware 19801.

(15) Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns. This Lease constitutes the entire agreement between the parties hereto and shall not be changed, amended or otherwise modified except by writing signed by Cityfest and the City.

(16) Access to Premises. City shall have the right to inspect the Demised Premises at any time during regular business hours and at any time in the event of an emergency. Further, the City hereby reserves easements for all existing and future utilities on and across the Demised Premises.

(17) Wage Tax. Cityfest shall be responsible for the payment of City wage taxes for its employees in accordance with the City of Wilmington's Wage Tax Law as it may be amended from time to time.

(18) Governing Law. This Lease shall be governed by the laws of the State of Delaware.

(19) Severability. In the event that a portion of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall not be affected thereby, but shall remain in full force and effect.

**IN WITNESS WHEREOF,** the parties have entered into this Lease the date and year first above mentioned.

**CITY OF WILMINGTON**

**CITYFEST, INC.**

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
City Clerk

Attest: \_\_\_\_\_  
Secretary

Approved as to form

\_\_\_\_\_  
Senior Assistant City Solicitor